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To: Microsoft ATR
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Subject: Microsoft Settlement

The proposed settlement fails to meet the public interest in a very critical way:

Microsoft executives have identified Linux as its number one competitor.

They vigorously used Linux before the trial court as proof of the existence of competition. The trial judge did not accept that claim as fact, but did agree the potential was there. The settlement does not even acknowledge open source as potential competition. The settlement further allows Microsoft to define what competition is (solely in the form of 'viable' companies) and hence prevent or suppress open source movement competition.

It would make sense for the settlement to permit that 'competitor' to actually compete. Linux is just the name for the most prominent competing operating system kernel. Many other components make up a usable system. Many of these are also released under the same or similar 'free' (GNU GPL) or 'open source' license provisions.

The most useful means of encouraging competition (open source or otherwise) is to make it feasible for other parties to write, release, and sell competing or complementary products, from the kernel through all kinds of end-user applications. To this end, three provisions must be added to the settlement:

1. Microsoft must be required to publish its file formats.
2. Microsoft must be prohibited from breaking competitive products.
3. A system of financial penalties must be implemented for violations.

Item 1.

Microsoft must publish, for free use by anyone, without any license, all the file formats used by its operating systems and applications. File formats are just the parameters required to read or write information to the hard drive, or for transmission to another program or computer. Knowledge of file formats is essential to write or use a competitive or complementary product.

All the variants of such formats must be included, and all changes must be promptly published. 'Promptly' means at the moment when Microsoft management determines that a change is necessary and provides such formats to its own programmers. Publication must include posting to an internet web site accessible to all, without any license, registration, or prior consent from Microsoft. Any person must be free to copy and republish, document or comment upon the formats without any consent of

Microsoft.

This does not give anyone access to the program code used for such purposes; Microsoft can still keep its programs, and methods of programming secret.

Item 2.

Microsoft has a history of breaking competitive programs by falsely claiming compliance with 'standards' and adding features which prevent competitive products from working properly. The most common method is 'embracing and extending' standards (ISO, IETF, etc). Embracing and extending is actually the practice of announcing support for a standard, and then adding features which are not documented, are proprietary, copyrighted or patented. These 'extensions' are specifically designed to break competing products. One example is "smart quotes", which is little more than a toy feature to help incompetent writers properly close quotes. It is done by changing (corrupting) the standard ISO fonts used by the word processor to something different than the ISO standard. It shows up in un-aware programs by displaying a question-mark or a garbage character. Other e&e practices are much more pernicious.

The settlement should require Microsoft to announce which standards it will support, and prohibit Microsoft from claiming compliance with any standard that is not supported. These adopted standards must be listed on the internet for open reference without registration, or prior consent from Microsoft.

Microsoft must be prohibited from 'extending' any supported standard by adding features not present in the standard. It is not necessary to require Microsoft (or any competitor) to adopt any standard, or to fully support all features of the standard. For many uses, partial support is sufficient. The key to preventing unfair competition is to ban Microsoft from breaking programs which do comply with standards.

Item 3.

In light of the fact that the present case originated in Microsoft's failure to comply with an existing consent decree, DOJ should establish a schedule of severe financial penalties for violations. Otherwise, Microsoft might well find it advantageous to cause competitors to 'spin their wheels' by publishing false, incomplete, or misleading information.

Violations should be considered to begin with the publication of any information which is subsequently found to be false, incomplete or misleading. The longer the violation period, the greater the penalty. The violation is proved by the use of a non-published file format or the perversion of an adopted standard in any Microsoft product.

The use of these methods of encouraging competition have a number of advantages:

1. They are essentially free of financial costs, both to Microsoft and the Government. Microsoft already has to document it's file formats for it's own use, and almost certainly on-line. Publishing the same documentation on the internet is almost zero - cost.

There is no cost (indeed a saving) in NOT perverting the implementation of a standard.

DOJ could accept being a digitally-signed copy of each such publication, transmitted at the time of publication to a DOJ computer. The digital signature should be considered binding for purposes of determining perjury.

2. Enforcement may be simplified. It seems likely that competitors will closely monitor Microsoft's publication of file formats and standards announcements, and compare closely what Microsoft programs actually do. In both cases, compliance is only a matter of determining facts which can be recognized by any competent person.

DOJ could maintain a web site devoted to receiving documented complaints. DOJ might consult commercial and non-commercial competitors to establish a structure for entering complaint information in a way that DOJ finds useful in summarizing observations into facts.

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